

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

June 29, 2000

Dear Xxxxx:

This letter is in response to your letter received April 27, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY is an electrostatic powder coating business located in CITY. We powder coat (paint) various metal objects a variety of colors for numerous local manufacturers (display racks, lighting fixtures, store fixtures, etc.). We have no product of our own and 100% of our sales are to commercial/industrial customers. We have no retail sales nor do our customers.

COMPANY consumes various materials during our coating operation. We have historically paid retail sales tax on the purchase of powder, replacement and new equipment and other such items. It is our understanding that we are not required to pay retail sales tax on these purchases.

Please forward the necessary form(s) to apply for an exemption number.

Thank you for your attention to this matter. Please contact me if you have any questions or if you need additional information.

From the limited information contained in your letter, it appears that you are describing a service scenario. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost

price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify, as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen pay Use Tax to their suppliers on their cost price of the tangible personal property transferred to service customers incident to sales of service. If their suppliers are not registered to collect and remit tax (e.g., they are out-of-State unregistered suppliers), the servicemen register to self-assess and remit Use Tax to the Department. Such servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax.

Your letter contains such limited information regarding the "new equipment" about which you ask, that a specific determination is not possible. However, we hope the following information is useful. Enclosed is a copy of the Department's regulations governing the Manufacturing Machinery and Equipment exemption. As you can see from subsection (e)(3) of this regulation, the exemption is not available for equipment which is used in the performance of a service, since service work does not typically involve the produce of tangible personal property for sale or lease. However, the exemption is available to persons considered servicemen, when they perform assembly or fabrication

work for a customer, as long as the goods so produced or assembled are destined for sale or lease, rather than for use or consumption. In the situation which you have described, it appears that the "equipment" which you reference is used to fabricate goods which are destined for use or consumption, and not for sale, and so the exemption would not be applicable.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.